IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION

MARILYN PORTER, :

Plaintiff, : NO. 4-98-CV-20374

vs. :

RULING ON DEFENDANT'S

INTERNAL REVENUE SERVICE, : MOTION FOR SUMMARY

JUDGMENT, AND ORDER

Defendant. :

The Court has before it Defendant's Motion for Summary Judgment, filed on June 28, 1999 (Clerk's No. 21). Plaintiff filed a brief resisting the Motion on July 22, 1999. Defendant filed a reply brief on August 3, 1999. The parties consented to proceed before a United States Magistrate Judge under 28 U.S.C. § 636(c). The Motion is fully submitted.

I. SUMMARY JUDGMENT STANDARD

A court may properly grant summary judgment when the record, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Estate of Gavin v. United States, 113 F.3d 802, 805 (8th Cir. 1997); Honeywell, Inc. v. United States, 973 F.2d 638, 641 (8th Cir. 1992). On a motion for summary judgment, a court must consider the facts and inferences to be drawn in the light most favorable to the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

II. FACTS

For the purposes of this Motion, the following facts are undisputed or are viewed in the light most favorable to the nonmoving party. In 1992 and 1993, Plaintiff Marilyn Porter's employer withheld taxes from her wages for federal income taxes. Plaintiff filed her 1992 and 1993 income tax returns late, in that she did not file either year's return on or

before April 15 following the close of the calendar year as required by Internal Revenue Code section 6072(a), nor did she request extensions for filing her returns.

Prior to filing her 1992 income tax return, Plaintiff contacted the Internal Revenue Service ("IRS") Information Center to determine the deadline for filing a refund claim. Plaintiff asserts Defendant's agent advised her the refund claim would be timely if filed by April 15, 1996, which was within three years of the original due date of the tax return, April 15, 1993.

While an income tax return and a claim for refund may be filed separately, Plaintiff combined her 1992 income tax return and refund claim by completing a form 1040A. Plaintiff alleges that during her conversation with Defendant's agent she verified that April 15, 1996, was the date she needed to mail the refund claim.

On April 15, 1996, Plaintiff mailed a form 1040A income tax return/refund claim to Defendant, reporting income of \$8,941 in employment wages, and claiming a \$652 refund. Plaintiff's 1992 form 1040A was delivered to Defendant at its Kansas City Service Center on April 17, 1996, which Defendant considered to be the filing date for the tax return/refund claim. On July 5, 1996, Defendant sent Plaintiff a form letter denying her refund claim, because she filed her refund claim more than three years after the date her 1992 tax payment was made and her return was due. Specifically, the letter stated as follows:

You filed your claim for credit or refund more than 3 years after the return due date, including any filing extension you requested for this return. The law states that we can't refund or credit tax to you if you paid it more than 3 years before the date you filed the claim. We consider withheld tax, estimated tax, or earned income credit as paid on the return due date.

¹ Plaintiff's taxes were deemed paid on April 15, 1993, for the 1992 tax year, and on April 15, 1994, for the 1993 tax year. See I.R.C.§ 6513(b)(1) (1994) (income taxes withheld by employer are prepaid taxes, which are deemed paid on April 15 of the year following close of tax year).

(Plaintiff's Resistance, Ex. 4). Plaintiff alleges the letter she received from Defendant does not indicate the filing date is the date her return was delivered to Defendant, rather than the date she mailed her return.

Plaintiff relied on the advice she received from Defendant's agent regarding filing her 1992 return/refund claim, when she mailed her 1993 income tax return/refund claim on April 14, 1997. On her 1993 return, Plaintiff reported income of \$8,653 in employment wages, and claimed a \$624 refund. Plaintiff's return was delivered to Defendant at its Kansas City Service Center on April 23, 1997, which Defendant asserts is the filing date. On June 20, 1997, Defendant sent Plaintiff a form letter denying her claim for the same reason it denied her 1992 refund claim: she filed her return more than three years after the date her 1993 taxes were deemed paid, and her return was due. Plaintiff alleges the letter she received from Defendant does not indicate the filing date is the date her return was delivered to Defendant, rather than the date she mailed the return.

III. DISCUSSION

A. Tax Refund Claims

Plaintiff asserts she is entitled to income tax refunds from taxes withheld by her employer for tax years 1992 and 1993. Defendant maintains Plaintiff is not entitled to refunds, because her refund claims were not timely filed.

Two limitation periods apply to claims for credits or refunds. I.R.C. § 6511 (1994). Under the first limitation period, the statute provides that:

[C]laim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time that was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid.

<u>Id.</u> § 6511(a). Defendant concedes Plaintiff complied with the first limitation period for both her 1992 and 1993 refund claims. Plaintiff simultaneously filed her returns and

refund claims on 1040A forms; therefore, she filed her refund claims within three years of filing her income tax returns.

Defendant alleges, however, that Plaintiff has not complied with the second limitation period, which provides as follows:

If the [refund] claim was filed by the taxpayer during the 3-year period prescribed in subsection [6511](a), the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return.

<u>Id.</u> § 6511(b)(2)(A). As noted above, Plaintiff's taxes were deemed paid on April 15, 1993, for the 1992 tax year, and on April 15, 1994, for the 1993 tax year. <u>See id.</u> § 6513(b)(1).

Defendant argues Plaintiff's returns/refund claims were delivered, and thus filed, on April 17, 1996, and April 23, 1997, more than three years after the payments deemed made on April 15, 1993, and April 15, 1994, respectively. Therefore, given that Plaintiff made no tax payments within the three years preceding the dates she filed her returns, Defendant alleges Plaintiff is barred from recovering refunds.

This issue was raised in Mills v. United States, where the plaintiffs made estimated tax payments for tax year 1986 on April 15, 1987. Mills v. United States, 805 F. Supp. 448, 450 (E.D. Tex. 1992). The IRS received plaintiffs' 1986 return/refund claim on May 3, 1990. Id. Under section 6511(b), the plaintiffs were barred from claiming a refund for the tax payment made on April 15, 1987, because the payment was made more than three years before they filed their refund claim. Id.

Here, if Plaintiff filed her refund claims on April 17, 1996, and April 23, 1997, the dates the returns/refund claims were delivered to Defendant, then Plaintiff's claims would not comply with section 6511(b), because her tax payments were made on April 15, 1993, and April 15, 1994, more than three years before she filed her returns/refund claims. Plaintiff asserts that her refund claims are timely because she mailed her 1992 form 1040A on April 15, 1996, and her 1993 form 1040A on April 14, 1997, which should be

considered the applicable filing dates.

In general, tax returns are filed when they are physically delivered to the IRS.

Id. § 7502(a). An exception exists for returns that are mailed on or before the prescribed filing date. Id. Defendant alleges that the mailing exception found in section 7502(a) does not apply because Plaintiff did not mail her tax returns on or before the last prescribed filing dates: April 15, 1993, for her 1992 taxes, and April 15, 1994, for her 1993 taxes. Therefore, Defendant argues, Plaintiff filed her returns late because her returns were filed on the dates they were delivered to Defendant, April 17, 1996, and April 23, 1997.

The mailing exception was asserted in the case of <u>Anderson v. United States</u>, where the plaintiff mailed her 1984 income tax return/refund claim 17 months after the return's due date, April 15, 1985. <u>Anderson v. United States</u>, 746 F. Supp. 15, 17 (E.D. Wash. 1990). The court held that because the plaintiff filed her return late, the mailing exception did not apply, and therefore, her return/refund claim was deemed filed on the date of delivery. <u>Id.</u>

As in <u>Anderson</u>, the mailing exception does not apply in this case because Plaintiff mailed her 1992 and 1993 tax returns on April 15, 1996, and April 14, 1997, after the due dates

of April 15, 1993, and April 15, 1994, respectively. Plaintiff's return/refund claims are therefore deemed filed on the delivery date. Given that Plaintiff's refund claims were filed more than three years after she paid her taxes, her claims are barred under section 6511(b). No genuine issue of material fact exists, and Defendant is entitled to judgment as a matter of law.

B. Equitable Relief

Plaintiff asks this Court to grant equitable relief because Plaintiff detrimentally relied on Defendant's agent's assertion that her 1992 refund claim would be timely filed if she mailed it on or before April 15, 1996. Two forms of equitable relief could apply in this

case: equitable tolling and equitable estoppel. Wiltgen v. United States, 813 F. Supp. 1387, 1395 (N.D. Iowa 1992). Equitable tolling focuses on the plaintiff's conduct, whereas equitable estoppel focuses on the defendant's conduct. Id.

In Irwin v. Department of Veterans Affairs, the Supreme Court recognized equitable tolling could apply to actions against the United States. Irwin v. Department of Veterans Affairs, 498 U.S. 89, 95-96 (1990). Equitable tolling may be available when a plaintiff is a person with a mental or physical disability, which serves as a barrier in preserving her legal rights. Wiltgen, 813 F. Supp. at 1395 (holding equitable tolling appropriate until disability removed, when plaintiff suffered from schizophrenia). Unlike the plaintiff in Wiltgen, the plaintiff in this case does not claim to be impaired by a mental or physical disability. Moreover, no evidence suggests Plaintiff was incompetent or in need of a conservator during the relevant time period.

The law is unclear concerning whether the second form of equitable relief at issue, equitable estoppel, may be asserted against the United States. Bell v. Fowler, 99 F.3d 262, 268 (8th Cir. 1996) (citing United States v. French, 46 F.3d 710, 714 (8th Cir. 1995)), Zabel v. United States, 995 F. Supp. 1036, 1049-50 (D. Neb. 1998) (noting Supreme Court has assumed doctrine may be asserted against United Sates in egregious circumstances) (citing Heckler v. Community Health Servs. of Crawford Co. Inc., 467 U.S. 51, 60 (1984)). For purposes of analyzing the instant motion, the Court will assume without deciding that the doctrine would apply here. To succeed in applying equitable estoppel to the federal government, a plaintiff must prove four elements: (1) a misrepresentation or action made by an agent of the United States, with reason to believe it would be relied on by the plaintiff; (2) amounting to affirmative misconduct; (3) that the plaintiff does not have access to the truth; and (4) detrimental reliance. Zabel, 995 F. Supp. at 1049 (holding plaintiff failed to meet her burden because letter sent to testatrix was not misleading, sending letter was not affirmative misconduct, plaintiff could not prove testatrix did not have access to truthful information, and plaintiff could not show testatrix detrimentally

relied on advice) (citing <u>Bostwick Irrigation Dist. v. United States</u>, 900 F.2d 1285, 1291 (8th Cir. 1990)); <u>see also Szpunar-Lojasiewicz v. Internal Revenue Serv.</u>, 876 F. Supp. 465, 468 (W.D.N.Y. 1994) (holding plaintiff's evidence insufficient to support defense of equitable estoppel, because plaintiff did not present any evidence the IRS "mislead or induced plaintiff to file a claim when she did").

Affirmative misconduct is defined by the courts as misconduct "that was designed to mislead or was unmistakably likely to mislead a plaintiff." Bell, 99 F.3d at 268-69 (quoting Garfield v. J.C. Nichols Real Estate, 57 F.3d 662, 666 (8th Cir. 1995)); see also United States v. Manning, 787 F.2d 431, 436 (8th Cir. 1986) (finding misleading or inaccurate statements did not amount to affirmative misconduct), Wellington v. Immigration and Naturalization Serv., 710 F.2d 1357, 1360 (8th Cir. 1983) (holding misunderstanding did not rise to level of affirmative misconduct).

Here, Plaintiff alleges Defendant's agent incorrectly informed her she could timely file her 1992 tax return/refund claim, by mailing the form 1040A on April 15, 1996. Plaintiff does not claim that this information was intended to mislead her. As in Manning and Wellington, Plaintiff merely claims she received inaccurate information, which is insufficient to demonstrate affirmative misconduct. See Wellington, 710 F.2d at 1360; Manning, 787 F.2d at 436. Furthermore, Plaintiff has failed to allege that she did not have access to correct information. No genuine issue of material fact exists, and as a matter of law, Plaintiff has failed to provide sufficient evidence to prove the elements of equitable estoppel, or to establish that equitable tolling is warranted in this case.

RULINGS AND ORDER

Defendant Internal Revenue Service's Motion for Summary Judgment (Clerk's No. 21) is **GRANTED** as to Plaintiff Marilyn Porter's 1992 and 1993 tax refund claims, and Plaintiff's request for equitable relief is **DENIED**. **IT IS ORDERED** that Plaintiff's claims against Defendant be dismissed.

IT IS SO ORDERED

DATED this 2nd day of September, 1999.

CELESTE F. BREMER UNITED STATES MAGISTRATE JUDGE